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**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED]

Office: MANILA, PHILIPPINES

Date: **AUG 25 2006**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Immigration Attaché, Manila, Philippines, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application declared unnecessary.

The applicant is a native and citizen of the Philippines who first entered the United States on September 1, 1979, as a visitor for pleasure. On February 5, 1980, the applicant was convicted of the offense of theft. Consequently, on August 8, 1981 the applicant was deported from the United States. On June 8, 1982 and July 1, 1983, the applicant entered the United States using the identity and documents of another individual and, therefore, is inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(6)(C)(i) for having procured admission into the United States by fraud. On August 5, 1983, the applicant was arrested and on February 17, 1984 he was convicted of the offense of possession of firearms by an illegal alien in violation of Title 18 U.S.C. Appendix 1, Section 1202(a)(5). The applicant was sentenced to 14 months imprisonment. Based on his conviction, the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. On May 9, 1986, an immigration judge ordered the applicant deported from the United States pursuant to section 241(a)(1)¹ of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1227(a)(1). The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen spouse. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) and seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) in order to travel to the United States and reside with his U.S. citizen spouse and children.

The Immigration Attaché determined that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the Form I-212 accordingly. *See Immigration Attaché Decision* dated September 19, 2003.

The AAO notes that the Notice of Denial (Form I-292) indicated “. . . Application for Waiver of Grounds of Excludability (I-601) be denied for the following reasons: SEE ATTACHMENTS.” The application in the present matter is for permission to reapply for admission, not a waiver of inadmissibility. The AAO finds this error to be harmless since it does not affect the outcome of the decision. In the attachment and his decision the Immigration Attaché adjudicated the Form I-212 pursuant to section 212(a)(9)(A)(iii) of the Act. In addition, on May 17, 2004, the Acting Immigration Attaché issued a corrected copy of the Form I-292. Furthermore, the AAO notes that in his decision the Immigration Attaché states that the applicant was deported on April 28, 1986. Citizenship and Immigration Services (CIS) database reflects that the applicant self deported on July 28, 1986.

Section 212(a)(9)(A) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

. . . .

(ii) Other aliens.- Any alien not described in clause (i) who-

¹ Now section 237(a)(1) of the Act.

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

On appeal, counsel states that the Immigration Attaché failed to consider the extreme hardship the applicant's U.S. citizen spouse and children will suffer. In addition, counsel states that too great an emphasis was placed on the applicant's conviction for firearms and no consideration was given to the fact that the conviction occurred 19 years ago. Additionally, counsel states that no consideration was given in assessing the applicant's moral character, respect for law and order, and evidence of reformation and rehabilitation.

Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act.

To recapitulate, the applicant was deported from the United States for a second time, on July 28, 1986. The record of proceedings does not reflect that the applicant re-entered the United States after his deportation. Counsel, the applicant and the applicant's spouse state that the applicant resides in the Philippines and there is no documentary evidence to show otherwise. The record of proceedings reflects that the applicant has been residing in the Philippines since the date of his second deportation. It has now been more than twenty years since the applicant's date of deportation. Therefore, the applicant is no longer inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act. Accordingly, the appeal will be dismissed and the Form I-212 will be declared unnecessary, as it has been established that the applicant is no longer inadmissible under section 212(a)(9)(A)(ii) of the Act.

As noted above, the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, for having procured admission into the United States by fraud, and section 212(a)(2)(A)(i)(I) of the Act, for having been convicted of a crime involving moral turpitude. Therefore, an Application for Waiver of Grounds of Inadmissibility (Form I-601) under sections 212(h) and (i) of the Act should be adjudicated.

ORDER: The appeal is dismissed and the application is declared unnecessary.